

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

NO. 7:21-CR-76-FL-1

UNITED STATES OF AMERICA )  
                                  )  
                                  )  
v.                              )  
                                  )  
JAMAL DYRON PRICE,          )  
                                  )  
                                  )  
Defendant.                   )

ORDER

This matter is before the court on defendant's motion to reopen final judgment pursuant to Federal Rule of Civil Procedure 60(b) (DE 49). Where defendant's motion asserts potential grounds for challenging his sentence in post-conviction proceedings, on the basis of alleged sentencing errors, the court hereby provides petitioner with notice, pursuant to Castro v. United States, 540 U.S. 375 (2003), that it intends to recharacterize the instant motion as an attempt to file a motion to vacate, set aside, or correct, his sentence under 28 U.S.C. § 2255.

Pursuant to Castro, the court warns defendant that this recharacterization means that any subsequent § 2255 motion will be subject to the restrictions on "second or successive motions." Castro, 540 U.S. at 383. In addition, the court provides defendant with an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has. Id. The court also notifies defendant of the § 2255 one year period of limitations, and the four dates in § 2255 to be used in determining the starting date for the limitations period. See 28 U.S.C. § 2255(f).

The court hereby permits defendant to file a response to the court's proposed recharacterization within **21 days** from the date of this order. The court advises defendant that if, within the time set by the court, he agrees to have the motion recharacterized or does not respond

in opposition to the recharacterization, the court shall consider the motion as one under § 2255 and shall consider it filed as of the date the original motion was filed. If, however, defendant responds within the time set by the court but does not agree to have the motion recharacterized, the court will not treat it as a § 2255 motion but will address the motion in accordance with the applicable procedural and jurisdictional rules of law governing criminal case matters.

SO ORDERED, this the 31st day of January, 2023.



LOUISE W. FLANAGAN  
United States District Judge